

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2143**

BY DELEGATE HOWELL

[Introduced January 9, 2019; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §47-28-1, relating to regulation of firearms, firearms accessories and  
3 ammunition; creating the “West Virginia Firearms Freedom Act”; providing legislative  
4 declarations of authority; definitions; exceptions; and providing that firearms manufactured  
5 in this state have the words “Made in West Virginia” clearly stamped on the firearm.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 28. WEST VIRGINIA FIREARMS FREEDOM ACT.**

**§47-28-1. Exemption of firearms, a firearm accessory or ammunition manufactured and  
retained in West Virginia, from federal regulation under the Commerce Clause of  
the Constitution of the United States.**

1 (a) Short title. -- This article may be cited as the “West Virginia Firearms Freedom Act”.

2 (b) Legislative declarations of authority. -- The Legislature declares that the authority for  
3 this section is as follows:

4 (1) The tenth amendment to the Constitution of the United States guarantees to the states  
5 and their people all powers not granted to the federal government elsewhere in the Constitution  
6 and reserves to the state and people of West Virginia certain powers as they were understood at  
7 the time that West Virginia was admitted to statehood in 1863. The guaranty of those powers is  
8 a matter of contract between the state and people of West Virginia and the United States as of  
9 the time that the compact with the United States was agreed upon and adopted by West Virginia  
10 and the United States in 1863.

11 (2) The ninth amendment to the Constitution of the United States guarantees to the people  
12 rights not granted in the Constitution and reserves to the people of West Virginia certain rights as  
13 they were understood at the time that West Virginia was admitted to statehood in 1863. The  
14 guaranty of those rights is a matter of contract between the state and people of West Virginia and  
15 the United States as of the time that the compact with the United States was agreed upon and  
16 adopted by West Virginia and the United States in 1863.

17           (3) The regulation of intrastate commerce is vested in the states under the ninth and tenth  
18 amendments to the Constitution of the United States.

19           (4) Article I, section two, of the Constitution of the State of West Virginia, states that “the  
20 government of the United States is a government of enumerated powers, and all powers not  
21 delegated to it, nor inhibited to the states, are reserved to the states or to the people thereof.”  
22 Specifically enumerated among those “powers so reserved to the states is the exclusive  
23 regulation of their own internal government and police; and it is the high and solemn duty of the  
24 several departments of government, created by this Constitution, to guard and protect the people  
25 of this state from all encroachments upon the rights so reserved.”

26           (5) The second amendment to the Constitution of the United States reserves to the people  
27 the right to keep and bear arms as that right was understood at the time West Virginia was  
28 admitted to statehood in 1863, and the guaranty of the right is a matter of contract between the  
29 state and people of West Virginia and the United States as of the time the compact with the United  
30 States was agreed upon and adopted by West Virginia and the United States in 1863.

31           (6) Article III, section twenty-two, of the Constitution of the State of West Virginia clearly  
32 secures to West Virginia citizens, and prohibits government interference with, the right of  
33 individual West Virginia citizens to keep and bear arms.

34           (c) Definitions. -- As used in this chapter, the following definitions apply:

35           (1) “Borders of West Virginia” means the boundaries of West Virginia described in Article  
36 II, section one, of the 1872 Constitution of the State of West Virginia.

37           (2) “Firearms accessories” means items that are used in conjunction with or mounted upon  
38 a firearm but are not essential to the basic function of a firearm, including, but not limited to,  
39 telescopic or laser sights, magazines, flash or sound suppressors, folding or aftermarket stocks  
40 and grips, speed loaders, ammunition carriers, and lights for target illumination.

41           (3) “Generic and insignificant parts” includes, but is not limited to, springs, screws, nuts  
42 and pins.

43 (4) "Manufactured" means that a firearm, a firearm accessory, or ammunition has been  
44 created from basic materials for functional usefulness, including, but not limited to, forging,  
45 casting, machining, or other processes for working materials; or assembled into a complete  
46 functional device from component parts.

47 (d) Prohibitions. -- A personal firearm, a firearm accessory, or ammunition that is  
48 manufactured commercially or privately in West Virginia and that remains within the borders of  
49 West Virginia is not subject to federal law or federal regulation, including registration, under the  
50 authority of Congress to regulate interstate commerce. It is declared by the Legislature that those  
51 items have not traveled in interstate commerce. This section applies to a firearm, a firearm  
52 accessory, or ammunition that is manufactured in West Virginia from basic materials and that can  
53 be manufactured without the inclusion of any significant parts imported from another state.  
54 Generic and insignificant parts that have other manufacturing or consumer product applications  
55 are not firearms, firearms accessories, or ammunition, and their importation into West Virginia  
56 and incorporation into a firearm, a firearm accessory, or ammunition manufactured in West  
57 Virginia does not subject the firearm, firearm accessory, or ammunition to federal regulation. It is  
58 declared by the Legislature that basic materials, such as nonmachined steel and unshaped wood,  
59 are not firearms, firearms accessories, or ammunition and are not subject to congressional  
60 authority to regulate firearms, firearms accessories, and ammunition under interstate commerce  
61 as if they were actually firearms, firearms accessories, or ammunition. The authority of Congress  
62 to regulate interstate commerce in basic materials does not include authority to regulate firearms,  
63 firearms accessories, and ammunition made in West Virginia from those materials. Firearms  
64 accessories that are imported into West Virginia from another state and that are subject to federal  
65 regulation as being in interstate commerce do not subject a firearm to federal regulation under  
66 interstate commerce because they are attached to or used in conjunction with a firearm in West  
67 Virginia.

68 (e) Exceptions. -- Section (d) does not apply to:

- 69           (1) A firearm that cannot be carried and used by one person;  
70           (2) A firearm that has a bore diameter greater than one and one-half inches and that uses  
71 smokeless powder, not black powder, as a propellant;  
72           (3) Ammunition with a projectile that explodes using an explosion of chemical energy after  
73 the projectile leaves the firearm; or  
74           (4) Excepting shotguns, a firearm that discharges two or more projectiles with one  
75 activation of the trigger or other firing device.  
76           (f) *Marketing of firearms.* -- A firearm manufactured in West Virginia under the provisions  
77 of this section must have the words "Made in West Virginia" clearly stamped on a central metallic  
78 part, such as the receiver or frame.

NOTE: The purpose of this bill is to exempt firearms, firearms accessories and ammunition from federal regulation if it is sold and maintained in the State of West Virginia.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.